

Supplemental Environmental Project Policy Amendment

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Outline

- Background
 - Current SEP Policy
 - SEP Utilization
- SEP Policy Amendment
- Assembly Bill 1071 (*now PRC 71118*)
- Policy Issues and Direction
- Next Steps



Background

- What is a Supplemental Environmental Project?
- SEP definitions in statute
 - AB 1071 (PRC 71118(a)(3))

“an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty”
 - Water Code 13385(l)(2) & 13399.35(b)



SEP Policy Amendment

- Current SEP Policy adopted in Feb 2009
 - Previously included in the Enforcement Policy
- Need for SEP Policy Amendment
 - Assembly Bill 1071 (now PRC 71118)
 - Water Code section 106.3 (Human Right to Water)
 - Water Quality Enforcement Policy amendments
 - Include Division of Water Rights and Division of Drinking Water
 - Re-organized for greater clarity, transparency and ease of implementation



SEP Utilization since 2000

Year	Total Number of Admin Orders	Total Number of Admin Orders with SEPs or ECAs	Total Value of SEPs or ECAs	SEP/ECA Utilization
2000	199	37	\$3,564,321	19%
2001	275	45	\$2,071,311	16%
2002	229	45	\$1,786,402	20%
2003	253	62	\$2,221,778	25%
2004	329	42	\$1,116,400	13%
2005	157	32	\$3,242,414	20%
2006	109	27	\$7,185,026	25%
2007	118	34	\$7,569,719	29%
2008	342	29	\$3,783,590	8%
2009	228	19	\$3,333,375	8%
2010	272	16	\$1,578,460	6%
2011	272	20	\$3,185,908	7%
2012	183	10	\$2,792,250	5%
2013	190	21	\$3,289,169	11%
2014	212	17	\$1,730,884	8%
2015	164	18	\$924,874	11%
2016	250	41	\$4,642,805	16%

AB 1071 (PRC 71118)

- Each BDO... shall establish a policy on SEPs that benefits disadvantaged communities. The policy shall include:
 - 1) A public process to solicit potential SEPs from disadvantaged communities.
 - 2) Allowing the amount of SEP to be up to 50%
 - 3) An annual list of SEPs that may be selected
 - 4) Consideration of the location of the violation and the location of the SEP



Public Process

PRC 71118 (b)(1)	A public process to solicit potential SEPS from disadvantaged communities (DACs).
<i>Current Policy, F</i>	<i>Does not address project solicitation.</i>
Proposed Policy, VII.A	<ul style="list-style-type: none"> • State Water Board to post a SEP proposal form, guidance, and evaluation criteria on its website to solicit SEPs from the general public including DACs. • Regional Water Boards and State Water Board Divisions may choose to post their own versions of these documents. • Encourages Water Boards to conduct additional outreach at an appropriate frequency to gain community input and actively seek SEP proposals from DACs.



Amount of SEP

PRC 71118 (b)(2)	Allowing the amount of a SEP to be up to 50 percent.
Current Policy, A	<i>Maximum is 50 percent, but OE director can approve SEPs greater than this amount with compelling justification.</i>
Proposed Policy, VIII.B	<ul style="list-style-type: none"> • Maintains current Policy language with the addition that SEPs may be approved in amounts greater than 50 percent if the SEP will be located in or benefit: <ul style="list-style-type: none"> ○ a DAC; ○ an environmental justice community; ○ a community with a financial hardship; or, ○ if it furthers the human right to water.



Annual SEP List

<p>PRC 71118 (b)(3)</p>	<p>An annual list of SEPs that may be selected to settle a portion of an enforcement action.</p>
<p><i>Current Policy, F</i></p>	<p><i>Regional Boards may maintain and post a list of potential SEPs. Frequency or criteria not specified.</i></p>
<p>Proposed Policy, VII.B</p>	<ul style="list-style-type: none"> • Requires Regional Boards and State Water Board Divisions to maintain and post on their websites a list of potential SEPs. • Allows flexibility for each Water Board or Division to determine what level of prioritization and pre-approval is appropriate for their available staff resources.



Nexus

<p>PRC 71118 (b)(4)</p>	<p>A consideration of the relationship between the <u>location</u> of the violation and the <u>location</u> of the proposed SEP.</p>
<p><i>Current Policy, E</i></p>	<p><i>Requires a relationship between the nature <u>or</u> location of the violation and the nature or location of the proposed SEP.</i></p>
<p>Proposed Policy, VIII.F</p>	<ul style="list-style-type: none"> • Maintains current Policy language that a nexus may be a relationship between the location OR the nature of the violation and SEP. • Provides examples of when an adequate nexus relationship exists between the violation and the SEP. <ul style="list-style-type: none"> ○ Location: in the same community, the same watershed, or within a 50-mile radius. ○ Nature: if SEP is designed to reduce the likelihood of similar violations in the future or reduce adverse impacts to public health and/or environment to which the violation contributes or could potentially affect.

Third Party-Administered SEPs

Other	Add requirements specific to third party-administered SEPs.
Current Policy	<i>Does not contain specific requirements.</i>
Proposed Policy, VIII.D	<ul style="list-style-type: none"> • Recommends Water Boards that prefer to utilize a third party to administer all SEPs within their geographic or subject matter jurisdiction to utilize a vetting process to ensure that the third party is both financially stable and capable of implementing and completing SEPs. • Requires that SEP funds be spent on the specific project defined in the stipulated order within 24 months.



Settlement Accounts

Other	Add requirements around establishing accounts for placement of funds before SEPs are implemented. Also add requirements for monies intended for SEPs that are deposited into third party-managed funds.
<i>Current Policy, C.4</i>	<i>Prohibits depositing funds in an account managed by the Regional Water Board unless it is authorized by statute.</i>
Proposed Policy, VIII.H	<ul style="list-style-type: none"> • Requires SEPs to be specific projects with an adequate nexus to the violation. • Depositing monies intended for SEPs to third party-managed funds to be allotted to the specific project approved and agreed upon in the stipulated order and spent within 24 months.



Oversight Costs

Other	Modify oversight provisions to further incentivize SEPs.
<i>Current Policy, H.1</i>	<i>Requires oversight costs be paid in addition to the amount of the SEP.</i>
Proposed Policy, VIII.G	<ul style="list-style-type: none"> Allows oversight costs up to 10 percent to be included as part of the total SEP amount if the SEP will be located in or benefit: <ul style="list-style-type: none"> ○ a DAC; ○ an EJ Community; ○ a community with financial hardship; or, ○ if it furthers the human right to water.



Audits

Other	Specify cases in which a third party financial audit is required to certify SEP completion.
<i>Current Policy, H.4</i>	<i>Auditing requirements could be further clarified.</i>
Proposed Policy, VIII.I	<ul style="list-style-type: none"> • Requires third party financial audit for any SEP over \$1M. • Allows any audit to be part of the SEP amount, but at the sole cost of responsible party.



Small Settlements

Other	Add requirements related to the aggregation of several small settlements to fund a larger SEP.
Current Policy	<i>Does not contain specific requirements.</i>
Proposed Policy	<p><i>Does not yet address this issue.</i></p> <ul style="list-style-type: none"> Consider placing a cap on the settlement amount eligible to fund a SEP. Aggregation of small settlements to fund a larger SEP may be risky in terms of maintaining nexus and liability sharing between different responsible parties if SEP fails.



Next Steps

- Comment period ends - September 20, 2017
- Public Hearing - September 20, 2017
- Adoption Meeting - November 7, 2017

SEP webpage:

https://www.waterboards.ca.gov/water_issues/programs/enforcement/sep.shtml

